



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0824]

RIN 1625-AA11

Regulated Navigation Area; Housatonic River, Bridge Replacement Operations; Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) on the navigable waters of the Housatonic River surrounding the Interstate 95 (I-95) Bridge, between Stratford and Milford, CT. This RNA allows the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the RNA during bridge replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the replacement of the bridge.

DATES: This rule is effective and will be enforced from January, 7, 2013 through November 30, 2017.

Comments and related material may be received by the Coast

Guard through the effective period.

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2012-0824. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is

202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, Joseph.L.Graun@uscg.mil; or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223-8385. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
I-95	Interstate 95
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
RNA	Regulated navigation area
RR	Railroad

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you

submit comments by mail and would like to know that they reached the Facility, please enclose a self-addressed, stamped, postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We currently do not plan to hold a public meeting. You may, however, submit a request for one, using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

A full waterway closure was not requested of the Coast Guard until November 21, 2012 when the Connecticut Department of Transportation (CT DOT) requested a complete waterway closure beginning January 7, 2013. This late submission did not give the Coast Guard enough time to publish an NPRM, take public comments, and issue a final rule before work begins in January.

It would be impracticable and contrary to the public interest to delay promulgating this rule, as it is necessary to protect the safety of both the construction crew and the waterway users operating in the vicinity of the bridge construction zone. A delay or cancellation of the currently ongoing bridge rehabilitation project in order to accommodate a

full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the bridge is expected to reopen for normal operations. The Coast Guard believes it would be impracticable and contrary to the public interest to delay this regulation. At any time, the Coast Guard may publish an amended rule if necessary to address public concerns.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. §§1221-1236, and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

The purpose of this rulemaking is to provide for safety on the navigable waters in the regulated area during bridge reconstruction.

D. Discussion of the Interim Rule

The Coast Guard is establishing an RNA on the navigable waters of the Housatonic River surrounding the Moses Wheeler Bridge which spans from Stratford to Milford, CT. This RNA allows the Captain of the Port Sector Long Island Sound (COTP) to establish speed and wake restrictions and to prohibit vessel traffic on this portion of the river for limited periods when necessary for the safety of vessels and workers during construction work in the channel. The Coast Guard will enforce a six knot speed limit as well as a "NO WAKE" zone and be able to close the designated area to all vessel traffic during any circumstance, planned or unforeseen, that poses an imminent threat to waterway users or construction operations in the area. Complete waterway closures will be minimized to that period absolutely necessary and made with as much advanced notice as possible. During closures, mariners may request permission from the COTP to transit through the RNA.

This rule was prompted by the navigation safety situation created by reconstruction of the Moses Wheeler Bridge (sometimes referred to as the Interstate-95 (I-95) Bridge or the Housatonic River Bridge). This bridge carries I-95 (Connecticut Turnpike) over the Housatonic River between Stratford and Milford CT. The present bridge was built in the 1950s and designed with a 50 year life span. The bridge has surpassed its useable life span and the Connecticut Department of Transportation (CT DOT) has

contracted to construct a replacement bridge. The contractor has begun bridge construction and is scheduled to complete the project in 2017.

The Coast Guard has discussed this project with CT DOT to determine whether the project can be completed without channel closures and, if possible, what impact that would have on the project timeline. Through these discussions, it became clear that while the majority of construction activities during the span of this project would not require waterway closures, there are certain tasks that can only be completed in the channel and will require closing the waterway. Specifically, this includes the demolition of steel support beams. These large and extremely heavy steel support beams are suspended 55 feet above the water; to demolish them, they must be cut into sections and lowered on to a barge. This process will be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the channel with a restricted ability to maneuver.

In a letter to the U.S. Coast Guard dated November 21, 2012, CT DOT outlined two phases of operations that require in-channel work, two steps of which will require waterway closures. CT DOT will notify the Coast Guard as far in advance as possible if additional closures are needed. The Coast Guard has a copy of

this letter in the docket.

The first planned closure period will be three days during January of 2013. The purpose of this closure is to remove the steel support beams of the existing Moses Wheeler Bridge northbound span. Currently, the Coast Guard anticipates the three days will be weekdays and the closure will be in effect from 7 a.m. through 7 p.m.

The second planned closure period is anticipated to be three days during January of 2014. The purpose of this closure is to remove the steel support beams of the existing Moses Wheeler Bridge southbound span. The three days will be weekdays and the closure will be in effect from 7 a.m. through 7 p.m.

Entry into, anchoring, or movement within this RNA during a closure is prohibited unless authorized by the COTP or a designated representative.

If the project is completed before November 30, 2017, the COTP will suspend enforcement of the RNA. The COTP will ensure that any notice of the suspension of enforcement reaches affected segments of the public by all appropriate means. Such means of notification could include, but would not be limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

E. Regulatory Analyses

We developed this rule after considering numerous statutes

and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways and all closures currently planned are scheduled during winter months when vessel traffic is low. Advanced public notifications will also be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the

potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter or transit within the RNA during a vessel restriction period.

The RNA would not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA would be of limited size and any waterway closure of short duration. Additionally, all closures currently planned are scheduled during winter months when vessel traffic is low, before the effective period of a waterway closure, advanced public notifications will be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T01-0824 to read as follows:

§165.T01-0824 Regulated Navigation Area; Housatonic River Bridge Replacement Operations; Stratford, CT

(a) Location. The following area is a regulated navigation area (RNA): All navigable waters of the Housatonic River between Stratford and Milford, CT, from bank to bank, surface to bottom; bounded to the north by the Metro North Railroad (RR) Bridge marked by a line connecting the following points: Point "A", 41°12'17.19" N, 073°06'40.29" W western edge of the RR bridge in Stratford, CT, east to point "B", 41°12'20.13" N, 073°6'29.05" W eastern edge of the RR bridge in Milford CT; bounded to the south by a line connecting the following points: Point "C" 41°12'14.36" N, 073°06'41.06" W western edge of construction trestle in Stratford, CT, east to point "D" 41°12'15.86" N,

073°06'27.57" W eastern bank of Housatonic River, Milford, CT.

All coordinates are North American Datum 1983.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Long Island Sound (COTP) or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a "Slow-No Wake" speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than six knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it creates a danger of injury to persons, or damage to vessels or structures of any kind.

(4) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(5) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(6) Persons and vessels may request permission to enter the RNA during periods of closure on VHF-16 or via phone at 203-468-4401.

(7) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR part 84 - Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) Effective period. This rule is effective from January 7, 2013 through November 30, 2017.

(d) Enforcement period. Except when suspended in accordance with paragraph (e) of this section, this RNA is enforceable 24 hours a day during the effective period.

(e) Suspension of enforcement. The COTP may suspend enforcement of the RNA. If enforcement is suspended, the COTP will cause a notice of the suspension of enforcement by all appropriate means to promote the widest publicity among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notifications will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(f) Waterway closure. The COTP may temporarily suspend all traffic through the RNA for any situation that would pose imminent hazard to life on the navigable waters. In the event

of a complete waterway closure, the COTP will make advance notice of the closure by all means available to promote the widest public distribution including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notification will include the date and time of the closure as well as the date and time that normal vessel traffic can resume.

(g) Violations of this RNA may be reported to the COTP, at 203-468-4401 or on VHF-Channel 16. Persons in violation of this RNA may be subject to civil or criminal penalties.

Dated: December 20, 2012

T. J. Vitullo
Captain, U.S. Coast Guard
Acting Commander, First Coast Guard District

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